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Tan Sri Harris bin Mohd Salleh v Dr Shaari Isa & Ors

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HIGH COURT (KOTA KINABALU) — CIVIL SUIT NO BKI-22NCvC-113/12 OF 2014
RAVINTHRAN J
23 NOVEMBER 2017

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Tort — Defamation — Libel — Plaintiff allegedly defamed in published book — Whether first defendant responsible for publication of book — Whether other defendants responsible for publication of book — Whether contents of book defamatory of plaintiff — Whether defendants proved defence of justification, fair comment and malice

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This was an action for libel on account of a book titled *Vendetta and Abuse of Power: Quest for justice in the Land Below The Wind-Political Vindictiveness and Personal Vilification Against Syed Kechik in Sabah [1975–2013]* ('the Vendetta book') that was authored by the first defendant. The second defendant was alleged to have requested the first defendant to write the book. The third, fourth and fifth defendants were the printer, publisher and distributor of the book. The plaintiff pleaded that he was defamed in the Vendetta book which was published in January 2014. However, the stories related in the book went a very long way back, ie to the late 1960s, 1970s and 1980s political scene in Sabah. The plaintiff and the late brother of the second defendant ie Tan Sri Dato' Syed Kechik bin Syed Mohamad Albukhary ('DSK') were prominent players during that part of Sabah's political history where they were alleged to have fiercely competed with each other for power and influence. In the Vendetta book, it was alleged that the plaintiff after becoming Chief Minister abused his powers to oppress DSK and corrupt. The plaintiff reproduced ten paragraphs of the Vendetta book in the statement of claim and pleaded that they contained defamatory imputations. The issues for consideration were: (a) whether the first defendant was responsible for the publication of the book; (b) whether the other defendants were responsible for the publication of the Vendetta book; (c) whether the contents of the Vendetta book were defamatory of the plaintiff; and (d) whether the defendants proved the defence of justification, fair comment and malice.

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Held:

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(1) There was an admission that the first defendant was the author of the Vendetta book. The first defendant was given research materials by the second defendant and hence, the first defendant could not deny being responsible for the publication of the Vendetta book (see paras 26–27).

(2) As the second defendant had not denied requesting the first defendant to write the said book and had knowledge of its publication, he must be held equally responsible for its publication. The second defendant could not deny responsibility for its eventual publication and distribution. The third to fifth defendants claimed they had no knowledge of the contents of the book. However, knowledge of the defamatory content of a statement on the part of a publisher was irrelevant in defamation law. In the premises, all the defendants were responsible for the publication of the alleged defamatory allegations against the plaintiffs in the Vendetta book (see paras 30, 35–36 & 39).

(3) The ten paragraphs of the Vendetta book were highly defamatory of the plaintiff and that they generally bore the meanings attributed to them by the plaintiff. Any allegation to the effect that a holder of a public office had defied the written law deliberately to victimise someone out of hatred or jealousy clearly was clearly defamatory. Regardless of the common sting in the book, if more than one defamatory statement was published, the plaintiff was entitled to select one for complaint and the defendant was not entitled to assert the truth of the others by way of justification. It was obvious that in the course of narrating the common sting, the author of the Vendetta book had defamed the plaintiff (see paras 48, 51 & 54–55).

(4) The defendants could not rely on the evidence of Paul Raffaele, the author of the book 'Harris of Sabah' to prove the fact that the plaintiff had been concerned with fattening his bank account. It was pure hearsay evidence. The defendants also did not produce any evidence in respect of the bank statements of the plaintiff at the material time. The fact that Paul Raffaele heard from the plaintiff that he was being investigated did not necessarily mean that the general corruption allegations had been proven on a balance of probabilities. The mere statement of Paul Raffaele that the plaintiff told him that he had been given timber concessions or was deriving benefit from it cannot prove the more serious defamatory imputation carried by the said offending paragraphs of the Vendetta book. There was no evidence to infer that the plaintiff's hatred and jealousy for DSK motivated him to abuse his power as Chief Minister to cause the Zara project land to be compulsorily acquired by the Sabah Government. Therefore, the defendants failed to prove the defence of justification to support the said defamatory allegation (see paras 72–73, 75 & 85).

(5) The comments were categorical and resounding accusations of corruption against the plaintiff and not mere comment. The first defendant had stated that the plaintiff as Chief Minister was corrupted without qualifying that he was making a comment on an established fact.

The comments made had no leg to stand on. Therefore, the defendants had failed to prove the defence of fair comment (see paras 93 & 95).

(6) The plaintiff had tendered sufficient inferential evidence to prove that the first and second defendants were motivated by malice in publishing the dafamatory statements. As the first defendant deliberately omitted to do what ordinary sense of fairness should had dictated to him, it could be inferred that he was motivated by malice to write calumny about the plaintiff. This was also supported by the admission of the second defendant that the purpose of the book was to regain his late brother's dignity and family honour (see paras 100 & 106).

(7) General and aggravated damages of RM50,000 were to be paid by the first defendant, RM100,000 by the second defendant and RM100,000 by the third, fourth and fifth defendants with an interest rate of 5%pa. Exemplary damages could not be awarded as the facts of the case did come within the principles enunciated in the case of *Rookes v Barnard & Ors* [1964] AC 1129. A permanent injuction and mandatory injuction were granted as it made no sense to allow continued publication and sale of the book after expunction of the paragraphs. Finally, the first and second defendants were to pay costs of RM50,000 to the plaintiff and the third, fourth and fifth defendants were also to pay costs of RM50,000 to the plaintiff (see paras 117–118 & 121–122).

[Bahasa Malaysia summary

Ini adalah tindakan bagi libel berdasarkan buku yang bertajuk *Vendetta and Abuse of Power: Quest for justice in the Land Below The Wind-Political Vindictiveness and Personal Vilification Against Syed Kechik in Sabah [1975–2013]* ('buku Vendetta') yang ditulis oleh defendan pertama. Defendan kedua didakwa meminta defendan pertama untuk menulis buku tersebut. Defendan ketiga, keempat dan kelima adalah pencetak, penerbit dan pengedar buku. Plaintiff memohon bahawa beliau telah difitnah dalam buku Vendetta yang diterbitkan pada Januari 2014. Walau bagaimanapun, kisah-kisah yang berkaitan dengan buku tersebut adalah adegan politik di Sabah ketika waktu terdahulu, iaitu pada akhir 1960-an, 1970-an and 1980-an. Plaintif dan arwah abang defendan kedua iaitu Tan Sri Dato' Syed Kechik bin Syed Mohamad Albukhary ('DSK') merupakan pemain terkenal di bahagian sejarah politik Sabah di mana mereka didakwa bersaing antara satu sama lain untuk kuasa dan pengaruh. Di dalam buku Vendetta, adalah didakwa bahawa plaintif selepas menjadi Ketua Menteri menyalahgunakan kausa untuk menindas DSK dan rasuah. Plaintif mengeluarkan semula sepuluh perenggan buku Vendetta dalam pernyataan tuntutan dan memohon bahawa ianya mengandungi tuduhan fitnah. Isu-isu pertimbangan adalah: (a) sama ada defendan pertama bertanggungjawab untuk penerbitan buku tersebut; (b) sama ada defendan-defendan lain bertanggungjawab untuk penerbitan buku Vendetta; (c) sama ada kandungan buku Vendetta adalah fitnah terhadap plaintif; dan

(d) sama ada defendan membuktikan pembelaan justifikasi, komen yang adil dan niat jahat. A

Diputuskan:

(1) Terdapat pengakuan bahawa defendan pertama adalah pengarang buku Vendetta. Defendan pertama telah diberikan bahan penyelidikan oleh defendan kedua dan oleh itu, defendan pertama tidak boleh menafikan tanggungjawab atas penerbitan buku Vendetta (lihat perenggan 26–27). B

(2) Oleh kerana defendan kedua tidak menafikan meminta defendan pertama untuk menulis buku tersebut dan mempunyai pengetahuan tentang penerbitannya, beliau harus dianggap bertanggungjawab untuk penerbitannya. Defendan kedua tidak dapat menafikan tanggungjawab untuk penerbitan dan pengedaran yang terjadi. Defendan ketiga dan kelima mendakwa mereka tidak mengetahui kandungan buku tersbut. Walau bagaimanapun, pengetahuan mengenai kandungan fitnah sesuatu pernyataan di pihak penerbit adalah tidak relevan dalam undang-undang fitnah. Dengan itu, semua defendan bertanggungjawab bagi penerbitan dakwaan fitnah terhadap plaintif di dalam buku Vendetta (lihat perenggan 30, 35–36 & 39). C D E

(3) Sepuluh perenggan buku Vendetta adalah berunsur fitnah kepada plaintif dan secara umumnya mempunyai makna yang dikaitkan kepada plaintif. Apa-apa tuduhan yang bermaksud bahawa pemegang jawatan awam telah menafikan undang-undang bertulis dengan sengaja untuk memperdayakan seseorang daripada benci atau cemburu adalah dengan jelas fitnah. Tanpa menghiraukan sengatan yang banyak di dalam buku, jika terdapat lebih daripada satu kenyataan fitnah diterbitkan, plaintif berhak untuk memilih untuk mendapatkan aduan dan defendan tidak berhak untuk menegaskan kebenaran orang lain dengan cara justifikasi. Adalah jelas bahawa semasa menyampaikan sengatan yang banyak tersebut, penulis buku Vendetta telah memfitnah plaintif (lihat perenggan 48, 51 & 54–55). F G

(4) Defendan-defendan tidak boleh bergantung kepada keterangan Paul Raffaele, penulis buku 'Harris of Sabah' untuk membuktikan bahawa plaintif sibuk dengan memperbanyakkan akaun bank beliau. Ia adalah keterangan dengar cakap. Defendan-defendan juga tidak mengemukakan apa-apa keterangan berkenaan dengan penyata bank plaintif pada masa material. Hakikat bahawa Paul Raffaele mendengar dari plaintif bahawa beliau sedang disiasat tidak semestinya tuduhan rasuah umum telah dibuktikan dengan keseimbangan kebarangkalian. Pernyataan Paul Raffaele semata-mata bahawa plaintif memberitahunya bahawa beliau telah diberikan konsesi kayu atau mendapatkan manfaat daripadanya tidak dapat membuktikan tuduhan fitnah yang lebih serius yang dibawa oleh perenggan bersalah tersebut dari buku Vendetta. Tiada H I

keterangan untuk menyatakan bahawa kebencian dan cemburu plaintif terhadap DSK mendorong beliau untuk menyalahgunakan kuasaannya sebagai Ketua Menteri menyebabkan tanah projek Zara dimansuhkan oleh Kerajaan Sabah. Oleh itu, defendan-defendan gagal membuktikan pembelaan justifikasi untuk menyokong dakwaan fitnah tersebut (lihat perenggan 72–73, 75 & 85).

(5) Komen-komen tersebut adalah tuduhan rasuah yang jelas dan besar terhadap plaintif dan bukan hanya komen. Defendan pertama menyatakan bahawa plaintif sebagai Ketua Menteri adalah tidak jujur tanpa menerangkan bahawa beliau membuat komen mengenai fakta yang terbentuk. Komen-komen yang dibuat tidak mempunyai dasar. Oleh itu, defendan-defendan telah gagal untuk membuktikan pembelaan komen yang adil (lihat perenggan 93 & 95).

(6) Plaintif telah mengemukakan bukti kesimpulan yang cukup untuk membuktikan bahawa defendan pertama dan kedua didorong oleh niat jahat dalam menerbitkan pernyataan fitnah. Oleh kerana defendan pertama dengan sengaja mengabaikan untuk melakukan apa yang wajar dilakukan oleh belliau, ia dapat disimpulkan bahawa beliau berhasrat dengan niat buruk untuk menulis fitnah tentang plaintif. Ini juga disokong oleh pengakuan defendan kedua bahawa tujuan buku itu adalah untuk mendapatkan kembali maruah arwah abang beliau dan kehormatan keluarga (lihat perenggan 100 & 106).

(7) Ganti rugi am dan teruk sebanyak RM50,000 perlu dibayar oleh defendan pertama, RM100,000 oleh defendan kedua dan RM100,000 oleh defendan ketiga, keempat dan kelima dengan kadar faedah 5% setahun. Ganti rugi teladan tidak dapat diberikan kerana fakta kes tidak termasuk dengan prinsip yang dinyatakan di dalam kes *Rookes v Barnard & Ors* [1964] AC 1129. Injunksi tetap dan injunksi mandatori telah diberikan kerana ia tidak masuk akal untuk membolehkan penerbitan dan penjualan buku selepas pemadaman perenggan. Akhir sekali, defendan pertama dan kedua perlu membayar kos RM50,000 kepada plaintif dan defendan ketiga, keempat dan kelima juga membayar kos RM50,000 kepada plaintif (lihat perenggan 117–118 & 121–122).]

Notes

For cases on libel, see 12(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 597–835.

Cases referred to

Abdul Rahman Talib v Seenivasagam & Anor [1965] 1 MLJ 142b (refd)

Abdul Razak bin Mohd Noor v Wan Muhammad Azri bin Wan Deris (Writ Summons No 23NCVC-17–01 of 2012) (unreported), HC (refd)
Bre Sdn Bhd & Ors v Tun Datuk Patinggi Hj Abdul Rahman Ya'kub [2005] 3 MLJ 485, CA (refd)
Chin Choon @ Chin Tee Fut v Chua Jui Meng [2005] 3 MLJ 494, CA (refd)
Chong Siew Chiang v Chua Ching Geh & Anor [1995] 1 MLJ 551, HC (refd)
Dar Al Arkan Real Estate Development Co and another v Majid Al-Sayed Bader Hashim Al Refai and others [2013] EWHC 1630 (Comm), QBD (refd)
Dato Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor [2014] 4 MLJ 242; [2014] 3 CLJ 560, CA (refd)
Datuk Seri Anwar bin Ibrahim v Wan Muhammad Azri bin Wan Deris [2014] 9 MLJ 605, HC (refd)
Datuk Seri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli & Anor [2017] 7 MLJ 150; [2016] AMEJ 2076, HC (refd)
Datuk Seri Nizar Jamaluddin v Utusan Melayu (M) Bhd [2013] MLJU 1642; [2014] 2 CLJ 605, HC (refd)
Institute of Commercial Management United Kingdom v New Straits Times Press (Malaysia) Bhd [1993] 1 MLJ 408, HC (refd)
International Times & Ors v Leong Ho Yuen [1980] 2 MLJ 86, HC (refd)
JB Jeyaretnam v Goh Chok Tong [1985] 1 MLJ 334 (refd)
Jahara Hamid v Lim Guan Eng [2015] MLJU 2358; [2015] 6 CLJ 328, HC (refd)
Joshua Benjamin Jeyaretnam v Goh Chok Tong [1989] 3 MLJ 1, PC (refd)
Lee Kuan Yew v Derek Gwyn Davies & Ors [1990] 1 MLJ 390, HC (refd)
Lewis and another v Daily Telegraph Ltd; Same v Associated Newspapers Ltd [1963] 2 All ER 151, HL (refd)
London Artists Ltd v Littler [1969] 2 QB 375, CA (refd)
McEvoy v Michael [2014] EWHC 701 (QB) (refd)
Parkes v Prescott and another (1869) LR 4 Exch 169; 38 LJ Ex 105; 17 WR 773 (refd)
Pengiran Othman Shah bin Pengiran Mohd Yusoff & Anor v Karambunai Resorts Sdn Bhd (formerly known as Lipkland (Sabah) Sdn Bhd) & Ors [1996] 1 MLJ 309; [1996] 1 CLJ 257, CA (refd)
Polly Peck (Holdings) plc v Trelford [1986] 2 All ER 84, CA (refd)
Pullman and another v Walter Hill & Co, Limited [1891] 1 QB 524, CA (refd)
R v Cooper (1846) 8 QB 533; 10 JP 631; 15 LJQB 206 (refd)
Reynolds v Times Newspapers [2001] 2 AC 127, HL (refd)
Rookes v Barnard & Ors [1964] AC 1129, HL (refd)
S Pakianathan v Jenni Ibrahim [1988] 2 MLJ 173, SC (refd)
Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor [1973] 2 MLJ 56 (refd)
Tun Datuk Patinggi Haji Abdul–Rahman Ya'kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393, HC (refd)

A *YB Hj Khalid bin Abdul Samad v Datuk Asis bin Isham & Anor* [2012] 7 MLJ 301, HC (refd)

Legislation referred to

Defamation Act 1957 s 7
B Rules of Court 2012 O 78 r 3(3)
Sabah Land Acquisition Ordinance (Cap 69)
Sabah Land Ordinance (Cap 68)

Yunof Maringking (Trevor Maringking with him) (Maringking & Co) for the plaintiff.
C *Raymond Szetu (Tiong Jia Yi with him) (Szetu & Co) for the first and second defendants.*
Govinda Raj (Raj & Co) for the third, fourth and fifth defendants.

D **Ravinthran J:**

INTRODUCTION

[1] This is an action for libel on account of a book that was authored by the
E first defendant. The third, fourth and fifth defendants are the printer, publisher and distributor of the book. The second defendant is alleged to have requested the first defendant to write the book.

HISTORICAL BACKDROP

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[2] The plaintiff has pleaded that he was defamed in the book titled *Vendetta and Abuse of Power: Quest for justice in the Land Below The Wind-Political Vindictiveness and Personal Vilification Against Syed Kechik in Sabah [1975–2013]* ('the vendetta book') which was published in January of
G 2014. However, the stories related in the book go a very long way back, ie to the late 1960's, 1970's and 1980's political scene in Sabah. The plaintiff and the late brother of the second defendant, ie Tan Sri Dato' Syed Kechik bin Syed Mohamad Albukhary ('DSK') were prominent players during that part of Sabah's political history.

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[3] Both plaintiff and DSK were alleged to have fiercely competed with each other for power and influence during the reign of the late Tun Datu Hj Mustafa bin Datu Harun's (Tun Mustafa) as Chief Minister of Sabah. Tun Mustafa headed the political party that is better known by its acronym USNO.
I DSK who had come from the State of Kedah in Peninsula Malaysia was a close associate of Tun Mustafa. Despite his outsider status, he was given major roles in state bodies including the Sabah Foundation. The plaintiff was a Minister in

Tun Mustafa's cabinet. Subsequently, the plaintiff fell out with Tun Mustafa and opposed him. The plaintiff and others including the late Tun Fuad Stephens (also known as Donald Stephens) formed the Berjaya Party that defeated USNO in the 1976 general elections. Tun Fuad Stephens replaced Tun Mustafa as the Chief Minister. The plaintiff later became the Chief Minister in 1976 following the crash of a plane that carried Tun Fuad Stephens.

[4] In the 'vendetta book', it is alleged that the plaintiff after becoming Chief Minister took revenge on DSK by making decisions that adversely affected the business interests of DSK. It is alleged that the plaintiff had even intended to expel him from Sabah. One of the decisions of the Sabah Government included acquiring valuable land that belonged to a company (Zara Sdn Bhd) in which DSK had interests. The land in question is referred to as the Zara project land. The alleged wrong done to Zara Sdn Bhd and by extension to DSK figures prominently in the 'vendetta book'.

[5] Apart from alleging that the plaintiff abused his powers as Chief Minister to oppress DSK, the 'vendetta book' had also alleged that the plaintiff was corrupt. This is the basis of the instant defamation suit by the plaintiff.

[6] The plaintiff reproduced ten paragraphs of the vendetta book in the statement of claim and pleaded that they contained defamatory imputations relating to abuse of power and corruption on his part. For good measure, the plaintiff had also pleaded that the defamatory imputations are not limited to the said ten paragraphs.

RELEVANCY OF EVIDENCE

[7] Given the history of the bitter political rivalry between the plaintiff and DSK, the parties in the suit and their counsel had from the outset of this trial had attempted to inject vindictive tit-for-tat allegations into the evidence. The proposed written witness statement of the plaintiff ran to 130 pages. Apart from denying the accusations in the book in question, the plaintiff devoted a large part of his witness statement to allege corruption and abuse of power in great detail on the part of DSK.

[8] Counsel for first and second defendants objected to the proposed witness statement of the plaintiff on the ground that a major part of it is irrelevant. I found the objection to be meritorious. The defamation action of the plaintiff is hinged on corruption and abuse of power allegations made against him in the 'vendetta book'. The defences raised in this case are justification and fair comment. Assuming that the plaintiff proves that the

A imputations contained in the book are defamatory and that the defendants are responsible for publication, the burden is on the defendants to prove the defences of justification and fair comment.

B **[9]** In the premises, the relevant issue is whether the defendants can prove the corruption allegations against the plaintiff and whether they can rely on the fair comment defence. The question whether the late DSK was corrupt or whether he had abused his influence and power is wholly irrelevant to this trial. It may not even be relevant to the issue of malice. Actual malice on the part of a defendant in a defamation action is relevant as its presence can defeat the C defence of fair comment. However, malice on the part of the late DSK would not be relevant as he obviously is not a defendant in this suit.

D **[10]** For the above reasons, I ruled that details of corruption allegations and abuse of power on the part of DSK should not creep into the evidence as it would protract the trial and result in unnecessary cross-examination. Unfortunately, the denials of the plaintiff that he was corrupt were mingled with the said irrelevant allegations against DSK throughout his lengthy proposed witness statement. I therefore sustained the objection of counsel for E defendants and disallowed the proposed witness statement of the plaintiff. I gave the option to the plaintiff to draft a new witness statement or proceed by way of oral testimony. The plaintiff elected to give oral testimony.

F **[11]** As the heavy hand of history, especially the acrimonious past political relationship between the plaintiff and the late DSK (who was in a sense represented by his brother, the second defendant) was the backdrop to this trial, counsel for the parties were unable to resist the temptation to continuously elicit irrelevant evidence throughout the trial. For example, the plaintiff was at one point cross-examined on his racial origin although his status as a Sabahan G or a Sabah native was not an issue in this case. I disallowed questions on that point for the simple reason that it was not relevant although it might be of interest to certain quarters. Similarly, I disallowed irrelevant cross-examination questions that were asked of the defendants' witnesses.

H **[12]** Before I proceed to discuss the issues in this case, I shall set out the claim of the plaintiff and the defences put up by the first to fifth defendants.

THE PLAINTIFF'S CASE

I **[13]** The plaintiff is currently a businessman. He was the Chief Minister of Sabah between 1976–1985. He told the court that in August of 2014, he came to know of the 'vendetta book'. He was told by his friends that he was vilified in the book as he was depicted as a 'bad man'. In para 13 of the statement of claim, the plaintiff identified ten paragraphs from the book that are defamatory

of him. They are found in Chapters 1, 3, 4, 5, 6, 8, 9 and 14. However, the plaintiff also pleaded that the defamatory imputations in the book are not limited to the said ten paragraphs.

[14] The alleged defamatory remarks found in the said ten paragraphs of the 'vendetta book' are as follows:

Chapter 8: Harris Salleh on the warpath

> 'This chapter endeavours to look at the malicious acts against Syed Kechik in more detail. It intends to show that these acts were not mere coincidences nor unintentional. They were indeed purposely carried out arising from jealousy, hatred, resentment and vengeance'. (at p 259, para 2)
>
> 'Harris had accused Tun Mustapha of being corrupt and a dictator (undemocratic), but when he was in power he was no better. Like Tun Mustapha, Harris must have enjoyed the grip and pomp of power, and of course the associated wealth that came with it and it looked as if he wanted it to stay that way for a long, long time'. (at p 279, para 4)
>
> 'Harris was too sure of himself but the people began to see his wealth accumulation and power-crazed ambition. Even before he came into power it was already observed by the Sabah Special Branch that 'Harris was only concerned with bolstering his own image and fattening his bank account'. (at p 280, para 2)
>
> 'This was because Harris was not seen to be quite forthright, and at one time was investigated for maintaining an illegal active interest in his company, and making company decisions while he was chief minister. But the issue was set aside when Dr. Mahathir came to his rescue with the argument that he was no more than a sleeping partner'. (at p 280, para 4)
>
> 'But it took nine years before the people of Sabah and the federal leaders realised the type of person he was. By that time he had made untold wealth for himself but the rural areas which he had been talking about championing still showed little significant improvement'.

'The people of Sabah had been made to believe that Syed Kechik was an outsider who came to Sabah to ravage the wealth of the state's forests for his own benefit, Syed Kechik did not ravage the forests of Sabah. Neither did Tun Mustapha. It was in fact Harris who ravaged the forests of Sabah'. (at p 282, para 3)

Chapter 9: The Karambunai Affair

> This seems to be yet another impropriety and injustice committed, relating to Bumiputra land ownership and dealing in Sabah where Harris Mohd Salleh was well in the picture. If the Chief Minister was not directly involved in the peninsula land debacle that had brought it to its present sorry state, he was well in the position to help and assist the development of the peninsular land in line with the country's New Economic Policy. There was no evidence that Harris Mohd Salleh had tried to do his part in helping the unfortunate Bumiputra owners, neither had he shown any interest in safeguarding their rights by

advising them and guiding them towards their betterment, and in the process protecting the interests of the state's Bumiputra community'. (at p. 304, paragraph 4) 'The key to all these was in the hands of Harris. When he was approached to delete Clause 20 of the 1894 Regulations which prohibited any dealing involving the peninsular land with a non-native, he should have steadfastly refused. But he instead, willingly complied. (at p 306, para 3)

Chapter 14: Roots of Jealousy Against Syed Kechik

'From the time the Zara project land was acquired by the Berjaya Party-led government in 1976 and during the whole nine years that it was in power, Harris simply defied the Sabah Land Acquisition Ordinance, first by doing nothing to use the seized land for 'public purposes' and second, by taking no positive action related to the compensation'. (at p 505, para 5)

'The impulsive seizure of the Zara project land was a rash act of Harris, an act done without much deep thought or systematic analysis. It was done merely to satisfy his and some people's ego and feeling of despair, defeat and dissatisfaction arising from political events and decisions that were made by the former state government under the leadership of Tun Mustapha'. (at p 522, para 4)

[15] In para 14 of the statement of claim, the plaintiff pleaded that the 'vendetta book' was maliciously written which in their natural and ordinary meaning and/or by inference or by false innuendo means and were understood to mean that:

(a) the plaintiff is a corrupted person who had used or abused his position and/or power to amassed his wealth and is guilty of criminal acts;

(b) the plaintiff engaged in lies, deceit and corrupt practices, which such practices being done in liaison with government and government officials;

(c) the plaintiff had influenced others or officers of the State of Sabah and the judiciary to victimise and/or to deny justice to the late Syed Kechik and/or the second defendant;

(d) the plaintiff when he was at the helm of the administration of the State of Sabah committed criminal and corrupt practices to serve or to further his own personal interest only to the detriment of the State and people of Sabah as a whole;

(e) the plaintiff was only concerned with bolstering his own image without sincere regards to do development of the rural areas and to Sabah in general;

(f) the plaintiff ravaged the forest resources of Sabah with the sole ambition to fatten his own bank account or to enrich himself;

(g) the plaintiff is a dictator who act according to his emotion and with no regards to the rule of law and/or without morale or principle at all;

(h) the plaintiff is untrustworthy and is bent on to abusing his power in order to satisfy his ego and/or to fulfil his need for vengeance by unlawful means; and

(i) the plaintiff did nothing in helping and uplifting the well-being of the people of Sabah, in particular the natives and he wilfully ignored the national New Economic Policy during his nine years tenure as the Chief Minister of Sabah.

[16] The plaintiff pleaded that his solicitors wrote to the defendants to demand a public apology and cease publication and distribution of the book but the defendants refused on the ground that the contents of the book as a whole are not defamatory of the plaintiff.

DEFENCE OF THE FIRST AND SECOND DEFENDANTS

[17] The pleaded defence is as follows in summary. The first defendant admitted being the author of the 'vendetta book'. The second defendant did not admit being responsible for its publication. However, the first defendant said that the second defendant gave him materials and money to write the 'vendetta book'.

[18] In respect of the ten paragraphs of the 'vendetta book' that had been reproduced in the statement of claim, the defendants pleaded that they should be read in the context of the whole book and that they are 'either true' or are 'expressions of opinion made in good faith without malice and on matters of public interest'.

[19] The first and second defendants proceeded to plead facts to justify the claims made in the 'vendetta book' or otherwise pleaded that the claims are fair comment. Thus, the first and second defendants relied on the defence of justification and fair comment.

DEFENCE OF THE THIRD TO FIFTH DEFENDANTS

[20] The third, fourth and fifth defendants denied that the paragraphs of the 'vendetta book' reproduced in the statement of claim bear a defamatory meaning. They also pleaded that they had been assured that the offending paragraphs of the 'vendetta book' are true in substance and fact or constitute fair comment on a matter of public interest. The defendants also denied that they were motivated by malice to publish and distribute the 'vendetta book'.

A AGREED ISSUES AND AGREED FACTS

[21] The parties tendered agreed issues and agreed facts for the trial. The agreed issues are:

B (a) whether the first defendant is responsible for the contents of the book titled 'vendetta book'?

(b) if the first defendant is so responsible, whether the defendants are jointly or severally responsible for the publication of the said book;

C (c) whether the contents of the said book or those parts thereof as reproduced under para 13 of the statement of claim ('impugned contents') bear the meanings as set out under para 14 of the statement of claim and are defamatory of the plaintiff;

D (d) if defamatory, whether the defence of justification and/or fair comment avail to the first and second defendants with regards to the impugned contents of the said book and/or any part thereof;

(e) if defamatory, whether the defence of unintentional defamation, justification and/or fair comment avail to the third, fourth and fifth
E defendants with regards to the impugned contents of the said book and/or any part thereof;

(f) if the answers to the third and/or fourth questions are in the affirmative whether the defendants published the impugned contents of the said
F book with malice; and

(g) if the answers to the third and/or fourth questions are in the negative what are the quantum of damages which the respective defendants or any one of them is liable to pay to the plaintiff for libel?

G

[22] The parties also agreed to the following facts:

(a) the first defendant is the author of the book entitled 'VENDETTA AND ABUSE OF POWER: Quest for justice in the Land Below The
H Wind-Political Vindictiveness and Personal Vilification Against Syed Kechik in Sabah [1975–2013]'('the said book');

(b) the third, fourth and fifth defendants are respectively the printer, publisher and distributor of the said book for sale; and

I (c) the plaintiff's solicitors wrote a letter dated 31 October 2014 to each of the defendants to demand apology for the contents of the said book.

PUBLICATION

[23] Publication is not disputed in this case. Under the law, the alleged defamatory statements must be forwarded to third parties to constitute publication (see *Pullman and another v Walter Hill & Co, Limited* [1891] 1 QB 524). There is little dispute in respect of the issue of publication in this case. The third, fourth and fifth defendants have agreed that they are the printer, publisher and distributor respectively of the 'vendetta book' which is alleged to be defamatory of the plaintiff.

[24] The plaintiff testified unchallenged that the 'vendetta book' was distributed in Kuala Lumpur and Kota Kinabalu. He also said that complimentary copies were delivered to homes in Kota Kinabalu. He also said that a friend of his in Kota Kinabalu had received the book and overseas visitors who had read the book had the impression that he was a 'bad man'. The third to fifth defendants had not denied that the book had been offered for distribution and sale. Therefore, irrespective of the number of copies sold or distributed for free, the plaintiff has proved on a balance of probabilities the fact of publication. I shall now move on to consider the agreed issues in this case.

RESPONSIBILITY FOR PUBLICATION

[25] In agreed issue No 1, the question that requires an answer is whether the first defendant is responsible for the publication of the book.

[26] The fact that the first defendant is the author of the 'vendetta book' is not in doubt. In para 3 of the statement of defence of the first and second defendants, there is an admission that the first defendant is the author of the 'vendetta book'. He is also credited as the author in the said book. In the statement of agreed facts, the parties agreed that he is the author.

[27] It is also not disputed that the first defendant was commissioned to write the said book by the second defendant and that he was paid RM30,000. It is also not disputed that the first defendant was given research materials by the second defendant for that purpose. And it must be presumed that the first defendant made manuscript available for printing and eventual sale or distribution. In the premises, the first defendant cannot deny being responsible for the publication of the 'vendetta book'.

[28] In agreed issue No 2, the question posed is whether the other defendants are responsible for the publication of the 'vendetta book'.

[29] In para 6 of the statement of defence of the first and second defendants, the second defendant refused to admit that he was responsible for the publication of the book. However, during the trial he admitted that he made research materials available to the first defendant. He also admitted that he invited the first defendant to write the 'vendetta book' to narrate the political history of Sabah during the early years of its independence particularly about the alleged acts of revenge and harassment against his late brother (DSK) which were perpetrated by the leaders of the Berjaya Party which included the plaintiff.

[30] The second defendant also said that he played no part in the printing and publication of the book as the first defendant dealt with the third, fourth and fifth defendants. Nonetheless, as the second defendant had not denied requesting the first defendant to write the said book and had knowledge of its publication, he must be held to be equally responsible for its publication.

[31] In the old case of *R v Cooper* (1846) 8 QB 533; 10 JP 631; 15 LJQB 206 which was cited by counsel for plaintiff, the court said as follows in respect of the liability of one who requests another to write libel:

> If a man request another generally to write a libel, he must be answerable for any libel written in pursuance of his request: he contributes to a misdemeanour and is therefore responsible as a principal. He takes his chance on what is to be published ...

[32] In *Parkes v Prescott and another* (1869) LR 4 Exch 169; 38 LJ Ex 105; 17 WR 773 the court said as follows:

> The man who requests another to make and publish an outline or summary of a speech, writing, or proceedings, must know that the words will be to some extent those of him who makes such summary or outline; and he must therefore, be taken to constitute him an agent for the purpose, and be answerable for the result, subject always to the question whether the authority has been really followed. If this be not so, a man might become a libeller with impunity.

[33] The above-mentioned passages were cited with approval in the recent English case of *Dar Al Arkan Real Estate Development Co and another v Majid Al-Sayed Bader Hashim Al Refai and others* [2013] EWHC 1630 (Comm).

[34] In discussing the joint liability of the defendants, it is also helpful to look at the following passages (6.10 and 6.11) from *Gatley on Libel and Slander* (12 Ed) which were cited in the case of *McEvoy v Michael* [2014] EWHC 701 (QB):

> 6.10 : 'The person who first spoke or composed the defamatory matter (the originator) is of course liable, provided he intended to publish it or failed to take

reasonable care to prevent its publication. However, at common law liability extends to any person who participated in, secured or authorised the publication ...'.

6.11 : In accordance with general principle, all persons who procure or participate in the publication of a libel, and who are liable therefor, are jointly and severally liable for the whole damage suffered by the claimant. *Thus in the case of the publication of a newspaper the journalist, editor and publisher are all joint tortfeasors*.

If one repeat, and another write a libel, and a third approve what is wrote they are all makers of it; for all persons who concur, and show their assent or approbation to do an unlawful act, are guilty' (*per curiam* in *R v Paine* (1696) 5 Mod 163 at 167). (Emphasis added.)

[35] As the second defendant had admitted requesting the first defendant to write the 'vendetta book' with the aim of documenting the alleged victimisation of his late brother (DSK), he cannot now deny responsibility for its eventual publication and distribution. The second defendant also never said that he did not want the 'vendetta book' to be published.

[36] In the statement of agreed facts, the third, fourth and fifth defendants agreed being the printer, publisher and the distributor of the 'vendetta book'. In para 6 of the statement of defence, the third to fifth defendants claimed that they had no knowledge of the contents of the book. However, knowledge of the defamatory content of a statement on the part of a publisher is irrelevant in defamation law. Mere publication or repetition of a defamatory statement without anything more is sufficient to attract legal liability.

[37] In *YB Hj Khalid bin Abdul Samad v Datuk Aziz bin Isham & Anor* [2012] 7 MLJ 301 cited by counsel for plaintiff, the court cited the following passage *Gatley on Libel and Slander* (8th Ed) at p 117 which is as follows:

Every republication of a libel is a new libel and each publisher is answerable for his act to the same extent as if the calumny originated with him.

[38] I also note that counsel for third to fifth defendants has not seriously argued in the written submissions that his clients are not responsible for the publication of the 'vendetta book'. He only argued that the 'vendetta book' as a whole is not defamatory of the plaintiff and that the defence of justification has been proven.

[39] In the premises, I shall answer agreed issue Nos 1 and 2 in the affirmative. In the premises, I find that all the defendants are responsible for the publication of the alleged defamatory allegations against the plaintiff in the 'vendetta book'.

Whether contents of book are defamatory of the plaintiff?

A **[40]** In agreed issue No 3, the question posed is whether the 'vendetta book' or the paragraphs reproduced in para 13 bear the defamatory meanings pleaded in para 14 and are defamatory of the plaintiff.

B **[41]** The plaintiff testified in court that his name is mentioned 471 times in the book. The name 'Harris' is mentioned in most of the ten paragraphs from the 'vendetta book' that are reproduced in the statement of claim. The defendants have not disputed that 'Harris' in the said paragraphs or that the mention of 'Harris' or 'Harris Salleh' elsewhere in the 'vendetta book' is a reference to the plaintiff. In the premises, the plaintiff has proved that he is the C person referred to in the alleged defamatory remarks that had been reproduced in para 13 of the statement of claim.

D **[42]** In answering the question whether the said ten paragraphs are defamatory of the plaintiff, I shall first direct myself on the test to be applied in determining whether a publication is defamatory. It is an objective test. Therefore, it is not necessary for a plaintiff to produce evidence that the reader of the publication thought he was a 'bad man'. It is a question of law that turns upon the construction to be placed upon the words published. Thus, the intention of the publisher or author of the defamatory words would be E irrelevant as well. The law is only concerned with the tendency and consequences of the published words (see *Institute of Commercial Management United Kingdom v New Straits Times Press (Malaysia) Bhd* [1993] 1 MLJ 408 which was cited by counsel for plaintiff).

F **[43]** In the famous case of *Lewis and another v Daily Telegraph Ltd; Same v Associated Newspapers Ltd* [1963] 2 All ER 151, the court said that the published words in question are deemed to be defamatory if they have the tendency to lower the reputation of the plaintiff in the mind of the hypothetical G reasonable man.

[44] In local case of *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56, Mohd Asmi J formulated the test as follows:

> H Thus, the test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinion of others, although no one believes the statement to be true. Another test is: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally? The typical type of defamation is an attack upon the moral character of the plaintiff attributing crime, dishonesty, untruthfulness, ingratitude or cruelty.

I **[45]** In the Singapore case of *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334 which featured prominent political adversaries, LP Thean J asked the following question to determine if the words complained of were defamatory:

> The crucial point in this issue is this: did the words complained of in their natural

and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If they did, then inescapably they were defamatory of the plaintiff.

[46] Counsel for the first and second defendants has not argued that a different test applies to determine the defamatory nature of the words in question as he also cited the case of *Syed Husin Ali v Sharikat Pencetakan Utusan Melayu Bhd & Another*. However, he submitted that the court should only have regard to the natural and ordinary meaning of the ten paragraphs of the 'vendetta book' that had been reproduced in para 13 of the statement of claim. I find merit in this submission.

[47] In para 14 of the statement of claim, the plaintiff only referred to 'the natural and ordinary meaning' and the 'false innuendo' meaning of the ten paragraphs reproduced in para 13. Counsel for first and second defendants pointed out that 'false innuendo' must be distinguished from 'true innuendo' as the latter requires extrinsic facts to be pleaded to reveal its meaning. In the instant case, extrinsic facts to support true innuendo has not been pleaded. Thus, as stated in *Syed Husin Ali v Sharikat Pencetakan Utusan Melayu Bhd & Another*, 'false innuendo' has to do with the natural and ordinary meaning of the published words. I shall therefore have regard only to the natural and ordinary meaning of the words.

[48] Having read the said ten paragraphs of the 'vendetta book' reproduced in para 13 of the statement of claim, I am of the opinion that they are highly defamatory of the plaintiff and that they generally bear the meanings attributed to them by the plaintiff in para 14. I should think that it would defy logic and common sense to say otherwise. My reasons are as follows.

[49] In the first paragraph, the first defendant had set the tone for the rest of the book in respect of his characterisation of the plaintiff. He said that 'malicious acts' against DSK would be examined. The reader is left in no doubt that the perpetrator of the said acts is the plaintiff.

[50] In the second paragraph, it is said that the plaintiff was no better than Tun Mustafa who was a 'corrupt' leader and 'a dictator'. In other words, it is implied that the plaintiff was also 'corrupt' when he ascended to the office of Chief Minister. Unless one accepts (I must add God forbid) that corruption is the norm and that it is acceptable in our national life and polity, to portray someone and especially a person who had held high political office as 'corrupt' is certainly defamatory by any reckoning. The first defendant went further in the other paragraphs in accusing the plaintiff of general corruption. He said that the plaintiff was 'power crazed' and was concerned with 'fattening his bank account' and had amassed 'untold wealth' and had ravaged the forest of Sabah.

[51] The first defendant also alleged that the plaintiff had misused and abused his powers as the Chief Minister of Sabah by compulsorily acquiring the Zara project land that belonged to a company in which DSK had interests. In doing so, the plaintiff is alleged to have 'defied' the written law as the acquired land was not used for a 'public purpose' and the owner was not paid any compensation. To my mind, any allegation to the effect that a holder of a public office had defied the written law deliberately to victimise someone out of hatred or jealousy clearly is clearly defamatory under the principles discussed earlier. Right thinking people would certainly hold such a person in contempt for abusing the public office that had been entrusted to him.

[52] In the written submissions, counsel for first and second defendants did not directly argue that the ten paragraphs in question are not defamatory. Instead counsel submitted that the court should consider the 'common sting' of the book which according to him is the allegation after coming to power as Chief Minister, the plaintiff harassed and penalised DSK because of 'hatred, jealousy and animosity'. Counsel referred the court to the case of *Polly Peck (Holdings) plc v Trelford* [1986] 2 All ER 84 where holding (No 2) of the headnote reads as follows:

> If the several defamatory allegations in their context had a common sting, they could not be regarded as separate and distinct allegations.

[53] In a similar vein, counsel for the third to fifth defendants argued that the 'vendetta book' if read as a whole is not defamatory of the plaintiff who is being 'sensitive'. Counsel also submitted that only ten paragraphs of the entire book had been reproduced in the statement of claim and argued as being defamatory.

[54] Regardless of the 'common sting' in the book, if more than one defamatory statement is published, the plaintiff is entitled to select one for complaint and defendant is not entitled to assert the truth of the others by way of justification. This appears in the same part of the headnote of the above-mentioned *Polly Peck* case cited by counsel for first and second defendants.

> (2) Where a publication contained two or more separate and distinct defamatory statements the plaintiff was entitled to select one for complaint and the defendant was not entitled to assert the truth of the others by way of justification. Whether a defamatory statement was separate and distinct from other defamatory statements contained in the publication was a question of fact and degree in each case. If the several defamatory allegations in their context had a common sting, they could not be regarded as separate and distinct allegations. It was fortuitous if what was in fact similar fact evidence was found in the publication. On the facts, the topics in the particulars to which the plaintiffs objected were not separate and distinct allegations. It followed that the judge had been to dismiss the applications and the plaintiffs' appeal would therefore be dismissed (see p 102 d e g, post); *S & K*

Holdings Ltd v Throgmorton Publications Ltd [1972] 3 All ER 497 applied; *Templeton v Jones* [1984] NsLR 448 considered; *Brembridge v Latimer* (1864) 4 New Rep 285 disapproved.

[55] Thus, even if the overall purpose of the book was to document the alleged harassment and victimisation of DSK after the plaintiff became the Chief Minister, counsel for the first and second defendants has no valid answer to the submission of counsel for plaintiff that the ten paragraphs in question contain distinct and specific allegations that are evidently defamatory. As these ten paragraphs which alleged corruption and abuse of power are interwoven in various parts of the 'vendetta book' which has the victimisation of the DSK as the central theme, it must be deemed that not only the ten paragraphs are defamatory of the plaintiff but the entire book as well. In the premises, it cannot be argued that since the 'common sting' is the harassment and victimisation of DSK, the plaintiff was not defamed. It is obvious that in the course of narrating the so-called 'common sting', the author of the 'vendetta book' had defamed the plaintiff. In fact, the expression 'common sting' in defamation cases is not a reference to the aim or purpose of a publication but rather to a common defamatory meaning found in several alleged defamatory statements. Therefore, in considering whether a particular statement is defamatory, the purpose or theme of the book is thoroughly irrelevant.

[56] For the above reasons, agreed issue No 3 must be emphatically answered in the affirmative.

JUSTIFICATION

[57] All the defendants raised the defence of justification. It is referred to in agreed issue No 4 and agreed issue No 5. I shall address collectively the defence of justification raised by all the defendants in this part of the judgment.

[58] The following passage from *Gatley on Libel and Slander* (8th Ed) explains the defence of justification:

> A plea of justification means that all words were true and covers not only the bare statement of fact contained in the alleged libel but also any imputation which the words in their context may be taken to convey; it affirms all that is attached to them as their natural and reasonable meaning; the inference that would ordinarily be drawn from them (cited in *Perunding Alam Bina Sdn Bhd v Errol Oh & Ors* [1999] 6 MLJ 101).

[59] I shall now direct myself on the burden of proof. In defamation law, once it is found that the published words are defamatory, the burden to prove the truth of the published words lies on the defendant. There is no burden on the plaintiff to prove the falsity of the publication that bears defamatory

content (see *International Times & Ors v Leong Ho Yuen* [1980] 2 MLJ 86 and *Bre Sdn Bhd & Ors v Tun Datuk Patinggi Hj Abdul Rahman Ya'kub* [2005] 3 MLJ 485).

[60] However, the defendant who pleads justification as a defence bears an onerous burden. In Court of Appeal case of *Dato Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor* [2014] 4 MLJ 242; [2014] 3 CLJ 560, Abang Iskandar JCA said as follows:

> In relying on the defence of justification the burden of proof is on the defendant to prove that the allegations made are true or are substantially true. The defendant must prove it on the balance of probabilities, that is, the allegation is more likely than not to be true. For example, an allegation published by repeating a rumour cannot be justified by proving that there was such a rumour. A defendant is required to prove the substance of the allegation. Since the burden of proving the truth of an allegation is on the defendant, claimants enjoy a distinct advantage in defamation claims. Justification has to be used with great care. It can often be difficult to obtain sufficient admissible evidence to persuade the judge that the statement is true.

[61] In an older famous case, ie *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142b, the court warned that the defamatory imputation must be actually proved:

> To establish a plea of justification, the defence must prove that the defamatory imputation is true. It is not enough for him to prove that he believed that the imputation was true, even though it was published as belief only. If A says of B that A believes B committed murder A cannot justify by saying and proving that A did believe it. A can only justify by proving the fact of murder. Similarly, if the defendant has written that A said that B, the plaintiff, had been convicted of theft it will be no defence for the defendant to prove that A did tell him so, that he honestly believed what A said, and only repeated it. He must prove as a fact that B was convicted of theft.

[62] However, it must be noted that the defence of justification if successful, is a complete defence as even malice on the part of the defendants cannot defeat this defence. The defendants must prove on a balance of probabilities that the defamatory words in the ten paragraphs in question or the imputations that can be drawn from it are substantially true.

[63] The common sting of the ten paragraphs in question are that the plaintiff was corrupt, dishonest and that he abused his power as Chief Minister. I shall firstly note that none of the defendants produced any direct evidence to justify the allegation of corruption against the plaintiff.

[64] Initially, the author of the 'vendetta book', ie the first defendant told the court that he did his own research apart from relying on the book 'Harris of

Sabah' which was written by Paul Raffaele when he was questioned as to his source of information on the corruption allegations and abuse of power allegations. He also said that the said allegations were made based on the impressions he formed after reading 'Harris of Sabah' and other books and court judgments made available to him.

[65] However, it was apparent during the lengthy cross-examination, that the first defendant relied exclusively on the 'Harris of Sabah' book written by Paul Rafaele for the damning accusation of corruption and the accumulation of ill-gotten wealth. The following excerpts from his testimony bear this out:

> Q: Refer to your Witness Statement Q&As 8, 9, and 10. Your allegations of ill treatment of Syed Kechik in Sabah after 1975 is sensationalised, unjustified and unfair without basis to defame the plaintiff. Agree?
>
> A: I disagree. All that written in my book is my impression I obtained from the materials that I have examined.
>
> Q: Refer paragraphs 13 and 16 of your Statement of Defence page 23 of Bundle A. The allegations in the book that the plaintiff had victimised or was jealous of Syed Kechik and the second Defendant are without evidence other than your impression on what Paul Raffaele wrote in his book Harris Salleh of Sabah. Agree?
>
> A: I agree the evidence I obtained under impressions.
>
> Q: Refer to paragraphs 18 to 28 of your Statement of Defence at pages 24 to 35 of Bundle A. Other than what Paul Raffaele wrote in Harris Salleh of Sabah and the law reports, you did not produce any evidence on your allegations of corruption and abuse of power against the plaintiff in the book. Agree?
>
> A: It is not my intention to make any allegation of corruption against the plaintiff. The plaintiff is not my enemy and I don't know him very well. I don't know him at all.

[66] As for the second defendant, he even denied that there is any allegation of corruption in the 'vendetta book' apart from what is stated in the 'Harris of Sabah' book. He said as follows:

> PUT: That you have no evidence on any or all the allegations of corruption or abuse of power made against the plaintiff under paragraphs 16 and 23 of your Statement of Defence. Do you agree?
>
> A: *I do not think that we made any allegations of corruption or abuse of power against the plaintiff.* We merely quoted what his own book said about certain matters mentioned in his book. I have no way of saying or giving any comments on this.
>
> ...

Q: You mentioned earlier that the book the writing of other author. Would you agree with me that other than the writing of another author, there are no real evidence of corruption or abuse of power or any criminal wrong doings on the plaintiff?

A: *We never claimed to say that there is corruption or abuse of power other than what is stated in the biography of the Tan Sri Plaintiff*. There is nothing for me to say on that. We did not say anything. (Emphasis added.)

[67] The second defendant also told the court that he did not produce 'any evidence of corruption at the trial because he did not see the need to'. He was content to rely on Paul Raffaele's book to rest the allegation of corruption and dishonesty against the plaintiff. Bearing the above in mind, I shall consider whether there is any evidence to justify the corruption allegations against the plaintiff.

[68] The lengthy 'vendetta book' did not only refer to the conduct of the plaintiff. It also referred to DSK and eulogised him. However, for the purpose of this case, what is relevant is whether the defamatory statements in the book against the plaintiff have been proven on a balance of probabilities.

[69] I found that the thread that runs through the ten paragraphs is that the plaintiff was corrupt, dishonest and that he had abused his powers. It is not disputed that the plaintiff was never charged in the criminal court for a corruption offence or an offence involving dishonesty or abuse of power. The first and second defendants called Paul Raffaele, the author of 'Harris of Sabah' (DW1) as their witness to support the defence of justification. I shall consider now whether his evidence assist the defendants to prove the defence of justification on a balance of probabilities.

[70] Paul Raffaele's examination in chief that was given by way of witness statement was brief. He said that the book he wrote, ie 'Harris of Sabah' was an authorised biography of the plaintiff. He conducted lengthy taped interviews with the plaintiff for the purpose of the book over a course of eight months. The interviews were done after the 1985 general elections in which the plaintiff's Berjaya Party was defeated by the PBS Party. He was paid a fee USD50,000 for writing the book. When the book was finished, he gave a completed manuscript of the book to the plaintiff for his perusal. The plaintiff indicated that he had no objection. It was published in 1986. Paul Raffaele was not involved in the publication of the book. It was financed by the plaintiff. He said that it was an authorised biography. In 2010, he came to Kota Kinabalu and met the plaintiff again. He offered to update the book but the plaintiff declined the offer and told him that he was happy with the 1986 version.

Recently, he heard the plaintiff denied that it was an authorised biography in his court testimony in this case and that is the reason he had come to testify.

[71] The evidence he gave in respect of the corruption allegation against the plaintiff is as follows. He said that the statement that the plaintiff was concerned with 'bolstering his own image and fattening his bank account' is information that he received from the then Police Commissioner of Sabah, ie Yusof Khan. This allegation is repeated in the 'vendetta book'.

[72] In my opinion, the defendants cannot rely on the evidence of Paul Raffaele to prove the fact that the plaintiff had been 'concerned with fattening his bank account'. I have already ruled that the statement carries a defamatory imputation. It may well be that Paul Raffaele had relied on Yusof Khan to make the statement. However, for the purpose of the law, it is pure hearsay evidence. Paul Raffaele has obviously no personal knowledge of it. The only person who could verify the information is Yusof Khan himself. He was not called and no evidence was led why he was not called. The defendants also did not produce any evidence in respect of the bank statements of the plaintiff at the material time. Counsel for the first and second defendants referred to a Reuters report that had estimated the wealth of the plaintiff to be in the hundreds of millions of ringgit at that time. But no proof of that fact was produced in court. Counsel for the first and second defendants also referred to 'public knowledge' of the wealth and palatial homes of the plaintiff. However, no evidence was produced. Repetition of a defamatory statement found in another publication will result in accrual of a fresh cause of action in defamation against the maker. Thus, it behoves the defendants to prove the statement that the plaintiff was concerned with 'fattening his bank account' and they failed to do so.

[73] Paul Raffaele also gave evidence in respect of the statement at p 279, para 4 of the 'vendetta book' to the effect that the plaintiff was investigated for maintaining an illegal active interest in his company after becoming Chief Minister. Paul Raffaele said he heard about it from the plaintiff himself. This may be admissible evidence and therefore repetition of this portion may be justified. However, it does not necessarily prove serious corrupt wrong doing on the part of the plaintiff when he was the Chief Minister to support the allegation of 'ravaging the forests of Sabah' and 'fattening his back account'. Paul Raffaele said that the plaintiff told him he was being 'investigated' only. The plaintiff did not confess to Paul Raffaele that he had made any corrupt decisions to favour his company while being Chief Minister. Therefore, the fact that Paul Raffaele heard from the plaintiff that he was being investigated does not necessarily mean that the general corruption allegations have been proven on a balance of probabilities. It would be otherwise if the author had made a

bare comment that it was not proper for a Chief Minister to maintain an active interest in his own company without resorting to sweeping accusations of corruption without evidence.

[74] Next, Paul Raffaele referred to timber concessions. Paul Raffaele said he wrote about it in his book 'Harris of Sabah' because the plaintiff told him that he received RM300,000 annually from timber concessions. However, this alleged confession of the plaintiff to Paul Raffaele does not prove the defamatory imputations in the ten paragraphs of the 'vendetta book' that is reproduced in the statement of claim.

[75] The plaintiff himself agreed in his testimony that he and other leaders were given timber concessions by the first Chief Minister of Sabah, ie Tun Fuad Stephens for 'political purposes'. However, it is implied in the offending paragraphs of the 'vendetta book' that plaintiff fattened his bank account and had 'ravaged the forests of Sabah' by using his powers as the Chief Minister. Therefore, to my mind, the mere statement of Paul Raffaele that the plaintiff told him that he had been given timber concessions or was deriving benefit from it cannot prove the more serious defamatory imputation carried by the said offending paragraphs of the 'vendetta book'.

[76] I am mindful that the first defendant as the author of the 'vendetta book' told the court that this was the impression that he got from reading Paul Raffaele's book. However, he did not merely quote what was stated in Paul Raffaele's book but he had gone further to cast the plaintiff as utterly corrupt and capable of ravaging the forest to accumulate untold wealth. Thus, by merely producing Paul Raffaele as a witness to repeat what the plaintiff told him about the benefit he received from timber concessions, the defendants have failed to prove that the plaintiff 'ravaged' the forests of Sabah. It would have been otherwise if the author of the 'vendetta book' had merely opined or commented that it is corruption if the plaintiff as a political leader had received a timber concession from the Chief Minister.

[77] The defendants also referred to a *Daily Express* article written by one Robert Lim who had argued that the rate of deforestation under the Berjaya Party government headed by the plaintiff was higher than the rate of deforestation under the USNO or PBS governments. However, the said article was not admitted into evidence as the author was not called as a witness and no other admissible evidence was tendered to support this claim.

[78] In the offending ten paragraphs of the 'vendetta book', the first defendant also wrote that the plaintiff abused his power as Chief Minister and acted out of revenge and jealousy against DSK in taking back the Zara project land under the Land Acquisition Ordinance of Sabah 1960.

[79] The Zara project land is a large parcel of land measuring 2542 acres in Kota Kinabalu. Part of the land once belong to individuals. The separate plots were purchased by Zara Ltd. Another 980 acres of adjoining state land was alienated to Zara Ltd. All the plots were eventually amalgamated to one title. The plaintiff tendered unchallenged evidence that the majority shareholder of Zara Sdn Bhd was a foreign company. DSK's company only held a minority interest. The second defendant testified that DSK had to look for foreign funding to develop the Zara project land.

[80] The accusation against the plaintiff in the offending ten paragraphs is that he abused his power as Chief Minister to wreak revenge on DSK by compulsorily acquiring the Zara project land without any justification.

[81] However, the defendants completely failed to prove the defence of justification with regard to the allegation that the plaintiff abused his powers with regard to the acquisition of the Zara project land. It is a matter of record that neither Zara Sdn Bhd or DSK challenged the acquisition of the Zara project land by way of judicial review. Only the issue of compensation dragged on for over 20 years under various Chief Ministers.

[82] During cross-examination, it was suggested that the plaintiff acquired the land for the government to punish DSK as there was there no real public purpose for its acquisition. The plaintiff testified that part of the land was meant for the Universiti Kebangsaan Malaysia, the Sabah Foundation Headquarters, Dewan Bahasa dan Pustaka and for government land bank.

[83] The defendants challenged the said assertions on the ground that the Universiti Kebangsaan Branch in Sabah had already been allotted 700 acres in Kinarut and that there was no need for land bank in Sabah for the government. Their witness, Robert Morley New (DW2) said there was no need for a land bank on the outskirts of Kota Kinabalu. However, no evidence was adduced that the acquisition of the Zara project land had breached any written law including the Sabah Land Ordinance (Cap 68) or the Sabah Land Acquisition Ordinance (Cap 69).

[84] The plaintiff told the court neither he nor his fellow cabinet members personally benefitted from the compulsory acquisition of the Zara project land by the Sabah Government. His assertion was not challenged in court. There is also no dispute that a large part of the land was eventually awarded to public institutions such as University Malaysia Sabah (1,000 acres), Sabah Foundation (120 acres) and Dewan Bahasa dan Pusaka (five acres).

[85] In the premises, there is no evidence to infer that the plaintiff's 'hatred and jealousy' for DSK motivated him to abuse his power as Chief Minister to

cause the Zara project land to be compulsorily acquired by the Sabah Government. I therefore find that the defendants failed to prove that the defence of justification to support the said defamatory allegation.

[86] Thus, the defendants failed to justify the more damning defamatory accusations of corruption, dishonesty and abuse of power.

FAIR COMMENT

[87] All the defendants pleaded fair comment as a defence in respect of the paragraphs of the 'vendetta book' quoted in the statement of claim. This defence is addressed in agreed issue No 4 and agreed issue No 5. A successful defence of fair comment would defeat a defamation claim unless it is defeated by presence of malice on the part of the tortfeasor.

[88] In the well-known Singapore case of *Joshua Benjamin Jeyaretnam v Goh Chok Tong* [1989] 3 MLJ 1, the Privy Council approved the High Court judge's stipulation of the conditions necessary for the defence of fair comment which are as follows:

(a) the words complained of are comment, although they may consist or include inferences of fact;

(b) the comment is on a matter of public interest;

(c) the comment is based on facts; and

(d) the comment is one which a fair-minded person can honestly make on the facts proved.

[89] In *Tun Datuk Patinggi Haji Abdul–Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393, Richard Malanjum (as he then was) said as follows in respect of this defence:

> For the defence of fair comment, in order to succeed the following basic elements must be established by the defendants, namely:
>
> (i) that the words complained of are comments, though they may consist of or include inference of facts;
>
> (ii) that the comments are on a matter of public interest; and
>
> (iii) that the comments are based on facts, truly stated. They must also be fair and which a fair-minded person can honestly make on the facts proved.

[90] Thus, the essence of the defence of fair comment is that the comment must be fair and must be based on facts. It must be not based on rumour or belief.

[91] The test to determine whether an utterance is a comment or a statement of fact was considered in the Singapore case of *Lee Kuan Yew v Derek Gwyn Davies & Ors* [1990] 1 MLJ 390:

> The question whether the words are a statement of fact or a comment is one of fact, the answer to which depends on the nature of the imputation conveyed thereby and the context and circumstances in which the words were published. The same words when published in one context may be a statement of fact, yet when published in a different context may be a comment. For example, if it is said of a member of the Bar that he is unfit to be a member of the Bar, that statement by itself is one of fact. On the other hand, if the same statement was prefaced by a statement that the member of the Bar has been convicted of cheating, then the statement becomes a comment.

[92] In *London Artists Ltd v Littler* [1969] 2 QB 375, Lord Denning explained the explained the distinction between comment and facts as follows:

> In order to be fair, the commentator must get his basic facts right. The basic facts are those which go to the pith and substance of the matter. They are the facts on which the comments are based or from which the inferences are drawn — as distinct from the comments or inferences themselves
>
> ... In fair comment, he need only prove the basic facts to be true.

[93] Although the first defendant had made various comments in the 'vendetta book' and in the said ten paragraphs, he has also made unqualified and clear-cut statement of facts which the plaintiff has proved is defamatory. The first defendant has alleged that the plaintiff was 'corrupt' and had been concerned with 'fattening his bank account' and had 'ravaged the forests of Sabah'. These are categorical and resounding accusations of corruption against the plaintiff and not mere comment. For example, the first defendant did not merely express an opinion that the plaintiff was corrupt because he accepted timber concessions or had maintained an active interest in his own company. He had stated that the plaintiff as Chief Minister was corrupted without qualifying that he was making a comment on an established fact such as the fact that the plaintiff received timber concessions.

[94] In addressing the justification defence earlier, I found that the defendants failed to prove that the principal accusations that the plaintiff was corrupt, dishonest, had ravaged the forests of Sabah and that he had abused his powers. The main plank of the case of the defendants to prove the defence of justification was Paul Raffaele's book. However, as I noted earlier, Paul Raffaele's brief evidence only repeated what the plaintiff told him over 30 years about having received timber concessions and having been investigated for maintaining an active interest in his company. It falls short of proving on a balance of probabilities the sweeping charges of corruption, dishonesty and ravaging the forests of Sabah.

[95] In the premises, the comments made in the said ten paragraphs of the book and elsewhere in the book which are based on the allegation that the plaintiff was corrupt and had abused his powers as Chief Minister have no leg to stand on. I therefore find that the defendants had failed to prove the defence of fair comment.

[96] I also find that even if the comments had some basis in fact, there were not fair. 'Fair' in the defence of fair comment means 'honest' (see *Reynolds v Times Newspapers* [2001] 2 AC 127). There must be reason to believe that the defendants honestly held the opinion that is disclosed in the comment in question. In the instant case, all the defendants are all essentially publishers. The first defendant is the author and the second defendant commissioned him to write the book. The third to fifth defendants are the printer, publisher and distributor. However, the defamatory statements in question were allegedly sourced from another book and comments were made without seeking any verification from the plaintiff. Thus, one is hard put to accept that the comments were honestly held opinions as no verification was sought from the plaintiff.

[97] I am also of the view that it is irrelevant whether Paul Raffaele's book 'Harris of Sabah' is an authorised biography or otherwise. Once who repeats a defamatory statement is obliged to prove it. Although, the author of 'Harris of Sabah' took the witness stand on behalf of the defendants, his evidence did not prove the serious and sweeping allegations of corruption and abuse of power against the plaintiff. Paul Raffaele only referred to the timber concessions given to the plaintiff. Apart from that, he said the plaintiff told him that he was investigated for maintaining an active interest in his own company. In any event, apart from acknowledging having received timber concessions from the first Chief Minister of Sabah, the plaintiff did not admit to being corrupt, dishonest and having ravaged the forests of Sabah in the 'Harris of Sabah' book.

MALICE

[98] I found that all the defendants failed to prove the defence of fair comment. If the defence of fair comment is successful, it can be defeated by the presence of actual malice on the part of the publisher of the defamation. The burden to prove actual or express malice lies on the plaintiff.

[99] In accordance with O 78 r 3(3) of the Rules of Court 2012, the plaintiff gave particulars of malice against all the defendants in the Reply. As against the first and second defendants, some of the particulars are as follows (in summary):

(a) the first and second defendants failed to seek explanation from the plaintiff;

(b) the second defendant harboured ill will towards the plaintiff due to alleged injustice meted out to his brother (DSK);

(c) the first and second defendants attributed criminal acts to the plaintiff although no criminal charges were ever brought to against the latter;

(d) that they failed to mention in the book that the Zara project land was acquired for public purpose and 1,000 acres was eventually given to University Malaysia Sabah;

(e) that Zara Sdn Bhd never challenged the acquisition but only contested the amount of compensation;

(f) that the first and second defendants were motivated by hatred in making unfounded accusations against the plaintiff, State Departments and the Malaysia Judiciary; and

(g) that the first and second defendants concealed the fact that the Bumiputra owners of the Karambunai land benefited in millions of ringgit in the form of rentals.

[100] I find that the plaintiff had tendered sufficient inferential evidence to prove that the first and second defendants were motivated by malice in publishing the more damning defamatory statements that the plaintiff was corrupt, dishonest and had abused his powers as Chief Minister. My reasons are as follows.

[101] The motive of the second defendant in publishing the book was to vindicate his brother who he thought had been victimised by the plaintiff. Thus, it was to square accounts with the plaintiff in respect of events that occurred about 30–40 years ago. To achieve that purpose, the writer ('the first defendant') had referred to a number of other publications that dealt directly or on the periphery about matters concerning DSK and the plaintiff.

[102] However, it is clear that the first defendant had taken liberties in his portrayal of the plaintiff and had concealed some crucial matters that would have blunted to some extent the depiction of the plaintiff as dictatorial, vengeful and corrupt. The omission of these crucial matters clearly points to malice on the part of the first and second defendants. I will mention some of them here.

[103] The acquisition of the Zara project land for the Sabah Government was played up in the book as act of revenge against DSK. However, it was not mentioned that DSK was only minority shareholder. This fact only emerged during the trial. It was also not mentioned that the plaintiff did not benefit personally from the acquisition and that the land was eventually awarded to public bodies such as the University Malaysia Sabah. It was also not mentioned

that Zara Sdn Bhd or DSK never bothered to contest the legality of the land acquisition in court but only troubled to contest the compensation offered by the government. Thus, it is completely obvious that the presentation of the facts of the acquisition were deliberately distorted to skewer the plaintiff.

[104] Another obvious misrepresentation of fact by way of material omission was in respect of the Karambunai land. It was land measuring over 3,000 acres that was in possession of a native family since the colonial period via a special land title. It was said in the book that the native owners were left now with only 500 acres as a non-native entity had managed to acquire the land because the plaintiff as Chief Minister consented to deletion of cl 20 of the title that prohibited dealing with non-natives. However, the first and second defendants conveniently ignored the fact that the land was not stolen from the native owners but that the native owners willingly leased part of the land after receiving consideration amounting to millions of ringgit. In fact, the native owners had applied to the plaintiff who was the then Chief Minister for deletion of cl 20 (see *Pengiran Othman Shah bin Pengiran Mohd Yusoff & Anor v Karambunai Resorts Sdn Bhd (formerly known as Lipkland (Sabah) Sdn Bhd) & Ors* [1996] 1 MLJ 309; [1996] 1 CLJ 257). However, the entire passage in the 'vendetta book' on the Karambunai land was slanted to give the impression that the Karambunai land was taken away from powerless native owners because the plaintiff as Chief Minister had for some unfathomable reason consented to deletion of cl 20.

[105] In respect of the allegation of corruption, the first defendant said that he merely relied on what was stated in Paul Raffaele's book. In *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173 which was cited by counsel for plaintiff, Wan Hamzah SCJ at the Supreme Court said as follows in respect of the duty to make an inquiry before making a defamatory accusation:

> Where the defendant purposely abstained from inquiring into the facts or from availing himself of means of information which lay at hand when the slightest inquiry would have shown the true situation, or where he deliberately stopped short in his inquiries in order not to ascertain the truth, malice may rightly be inferred: *Lee v Ritchie* (1904) 6 F (Ct of Sess) 642.

[106] I find that the first defendant had the opportunity to inquire with the plaintiff about the serious allegations of corruption that he was about to hurl at the plaintiff in his book. He took about four long years to write the book. Apart from the materials given to him by the second defendant, he said that he also carried out his own research. The plaintiff is a prominent person in Sabah and it would not have been difficult to locate him or write to him for his response. However, the first defendant agreed that he never bothered to give an opportunity to the plaintiff to reply to the serious allegations of corruption that his book carried. He simply assumed that the plaintiff was 'going to be biased'.

Thus, as the first defendant deliberately omitted to do what ordinary sense of fairness should have dictated to him, it can be inferred that he was motivated by malice to write calumny about the plaintiff. This conclusion is also supported by the admission of the second defendant that the purpose of the book was 'to regain his late brother's dignity and family honour'.

UNINTENTIONAL DEFAMATION

[107] The defence of unintentional defamation was pleaded by the third to fifth defendants. It is a defence allowed by s 7 of the Defamation Act 1957. It applies to a person who claims that he published defamatory words innocently and had made offer of amends under s 7.

[108] However, in the instant case, there is no evidence that the third to fifth defendants had made any offer of amends. In the final written submissions, I note that counsel for third to fifth defendants did not pursue this defence on behalf of his clients.

[109] In conclusion, the plaintiff has proved the fact of publication of the defamatory content of the ten paragraphs of the 'vendetta book. The defences of justification and fair comment of the defendants failed. In the premises, I shall proceed to assess damages.

DAMAGES

[110] In the statement of claim, the plaintiff has claimed for general damages, aggravated damages and exemplary damages for libel. In the written submission, counsel for plaintiff suggested total damages of RM1m.

[111] Counsel for plaintiff referred the court to the case of *Chin Choon @ Chin Tee Fut v Chua Jui Meng* [2005] 3 MLJ 494. In that case, Gopal Sri Ram JCA quoted from the book *Defamation Law, Procedure and Practice* by *Price & Doudu* where the following factors were stated to be relevant to the assessment of damages in defamation cases:

(a) the gravity of the allegation;

(b) the size and influence of the circulation;

(c) the effect of the publication;

(d) the extent and nature of the claimant's reputation;

(e) the behavior of the defendant; and

(f) the behaviour of the claimant.

[112] The second defendant told the court that the aim of the book was to provide a record of the acts of harassment and revenge against his late brother (DSK) after the Berjaya Party came to power. However, the 'vendetta book' stooped to making very damning and sweeping allegations of corruption and abuse of power on the part of the plaintiff who was the Chief Minister in the Berjaya government. The accusations are highly defamatory and suggests criminal wrong doing on the part of the plaintiff. In the premises, upon failure of the justification defence, the plaintiff is entitled to reasonable damages including aggravated damages. On this point, I do not accept the argument of counsel for defendants that the plaintiff failed to prove actual damage to reputation. It is presumed that damage to reputation would result from the publication a defamatory statement. However, in accordance with the advice of the Court of Appeal in *Chin Choon @ Chin Tee Fut v Chua Jui Meng* [2005] 3 MLJ 494, aggravated damages need not be awarded separately but can be awarded together with general damages.

[113] The plaintiff testified that the book was actually distributed in Kuala Lumpur and Kota Kinabalu and had been placed on book shelves of the bookstores of the fifth defendant. The third, fourth and fifth defendants' sole witness (DW5) testified that 3,000 copies of the book were printed but only 890 copies were sold. He also said that 1,265 complementary copies were given away. Although the circulation is far smaller than that of the average newspaper circulation, it is a fact that there was circulation of the 'vendetta book'. The plaintiff himself said that copies had been delivered to homes in Kota Kinabalu and one of his friends received a copy.

[114] The standing of a plaintiff in society or his reputation is always a factor in the award of damages. The plaintiff is a former Chief Minister of Sabah. He is currently a businessman. There is no evidence that his reputation as a successful political leader and businessman had been tarnished by criminal misconduct. However, in the 'vendetta book', the serious accusations against him suggest criminality on his part. In the premises, he is entitled to the protection of his reputation and compensation for wounded feelings. Furthermore, during trial the defendants unsuccessfully attempted to prove the defence of justification which would naturally have aggravated the defamatory accusations levelled in the 'vendetta book'.

[115] However, I am of the view that an award of damages of RM1m is on the high side. Counsel for plaintiff cited some recent defamation cases involving active politicians and public office holders. In the case of *Jahara Hamid v Lim Guan Eng* [2015] MLJU 2358; [2015] 6 CLJ 328, the court awarded the sum of RM500,000. In *Datuk Seri Nizar Jamaluddin v Utusan Melayu (M) Bhd* [2013] MLJU 1642; [2014] 2 CLJ 605, the plaintiff was awarded the sum of RM250,000. In *Abdul Razak bin Mohd Noor v Wan Muhammad Azri bin Wan*

Deris (Writ Summons No 23NCVC-17–01 of 2012) (unreported), the plaintiff was awarded RM500,000. In *Datuk Seri Anwar bin Ibrahim v Wan Muhammad Azri bin Wan Deris* [2014] 9 MLJ 605 the plaintiff who is a former Deputy Prime Minister was awarded RM800,000.

[116] Nonetheless, I am of the view that the fact that circulation was limited in this case as compared to the publication of defamation in the mainstream newspapers and websites in the above-mentioned cases should be taken into account. DW5 testified that only 3,000 copies of the 'vendetta book' in total were printed. I accept his evidence as he would be in the best position to known of the number of copies printed. The plaintiff himself came to know of the book only eight months after publication.

[117] Having considered all the circumstances, I shall award the following damages as general and aggravated damages. I order the first defendant to pay RM50,000 in general and aggravated damages to the plaintiff. Since, the second defendant was responsible for employing the first defendant to write the book, he bears greater responsibility for the publication. The second defendant is ordered to pay RM100,000 in general and aggravated damages to the plaintiff. The third, fourth and fifth defendants are ordered to jointly pay RM100,000 in general and aggravated damages to the plaintiff. I also order that interest at the rate of 5% pa shall attach to all the above sums from the date of judgment to the date of full payment.

[118] Thus, the total amount of general damages awarded to the plaintiff is RM250,000 which includes aggravated damages as well. However, I did not award the exemplary damages as the facts of this case do come within the principles enunciated in the case of *Rookes v Barnard & Ors* [1964] AC 1129. Exemplary damages as opposed to compensatory damages are awarded to show the disapproval of the court as to the conduct of the defendant. Thus, they are punitive in nature. They are rarely awarded in civil cases except where there is evidence that the tortfeasor had deliberately calculated that he would make a profit from the tortious act.

[119] In the case of *Rookes v Barnard & Ors*, the court set out the categories of cases where exemplary damages may be awarded. It is an authority that has been consistently applied by the Malaysian courts. In the recent defamation case of *Datuk Seri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli & Anor* [2017] 7 MLJ 150; [2016] AMEJ 2076, Asisul Asmi Adnan JC (now High Court judge) cited *Rookes v Barnard & Ors* and pointed out that the categories of cases where exemplary damages may be awarded are limited as follows:

(a) where they are recognised by statute;

(b) where the wrong involves oppressive, arbitrary or unconstitutional actions by agents of the government; and

(c) where the defendant's tortious act has been done with guilty knowledge, for the motive that the chances of economic advantage outweigh the chances of economic or perhaps physical penalty.

[120] In the above-mentioned case, the plaintiff succeeded in proving his case but the court disallowed the claim for exemplary damages. In the instant case as well, the plaintiff has not adduced any evidence under category (c). The third, fourth and fifth defendants' witness testified unchallenged that only 3,000 copies of the 'vendetta book' were printed and only 890 copies were sold. More than a 1,000 copies were given away. There is no evidence from the plaintiff as to the profit made by the defendants from the sale of the 'vendetta book'. Given the purpose of the publication, it is extremely unlikely that any of the defendants were motivated by monetary considerations. Furthermore, as stated in the case of *Chong Siew Chiang v Chua Ching Geh & Anor* [1995] 1 MLJ 551, exemplary damages should not be considered if the compensatory damages would be adequate. In the instant case, the total compensatory damages awarded is RM250,000. I am of the view that due to the limited circulation of the 'vendetta book', this amount is adequate as compensation. In the premises, this is another reason not to award exemplary damages. I shall therefore dismiss the claim for exemplary damages.

[121] The plaintiff had also prayed for a permanent injunction to restrain any of the defendants from further printing and publishing the book or any similar libel. He also prayed for a mandatory injunction against the third to fifth defendants to cease selling the 'vendetta book' and recall the book from bookstores. I found that these prayers are proper although only ten passages of the 'vendetta book' were reproduced in the statement of claim. As I said earlier, the defamatory paragraphs are inextricably interwoven with other parts of the book and fits in with the overall theme of the alleged victimisation and harassment of DSK. In the premises, it makes no sense to allow continued publication and sale of the book after expunction of the said paragraphs. I shall therefore grant a permanent injunction and mandatory injunction in accordance with prayers (3) and (4) of the statement of claim.

[122] Finally, I shall order the first and second defendants to pay costs of RM50,000 to the plaintiff. The third, fourth and fifth defendants are ordered to pay costs of RM50,000 to the plaintiff.

Order accordingly.

Reported by Nabilah Syahida Abdullah Salleh